

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4116 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA.

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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SARDARBHAI DHANABHAI PATEL

Versus

ADDITIONAL DISTRICT POLICE OFFICER

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Appearance:

MR DD VYAS for Petitioner

M/S MG DOSHIT & CO for Respondent No. 1, 2

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CORAM : MR.JUSTICE R.BALIA.

Date of decision: 13/12/96

ORAL JUDGEMENT

1. The petitioner filed this petition in September 1984 for a mandamus to the respondents to give promotion to the petitioner to the post of Head Constable from the date his immediate junior was promoted to the said post with all consequential benefits, when promotional exercise has taken place in 1977-78 and 1979 when he became eligible for promotion. However, at all the three

times, he was not promoted. However, the petitioner chose to make his grievance only in 1984.

2. Since the filing of this petition, it is stated by the learned counsel for the petitioner that petitioner has been promoted to the post of Head Constable with effect from 1.9.1986, therefore, so far as the cause of petitioner for considering and promoting the petitioner to the post of Head Constable no more survive. The another contention of the petitioner that that he should be given promotion from back date, in my opinion also cannot be considered at this stage. According to the averments made in the petition itself, petitioner had first appeared in 1975 in the interview for the post of Head Constable where he passed the written test and was called for interview. However, he was not selected. No challenge to that order was ever made until filing of the petition. In 1978, again the petitioner appeared in the written test but he was declared fail in the interview. Obviously, when the petitioner failed in the test designed for promotion he could not claim promotion along with candidates who participated in the exercise of 1978. Thereafter again the petitioner appeared in 1979 where he passed in the written test and was called for interview but he was not selected and person junior to him in the rank of Constable was given promotion. Even this order was not challenged until filing of this petition. If the grievance was really against non consideration of the petitioner's case vis-a-vis person junior to him in the service, he would have promptly challenged the action. The very fact that the petitioner has not chosen to challenge the exercise of promotion taken place in 1975, 1978 and 1979 about which reference has been made in the application goes to show that he had no grievance in the selections that had taken place at that time but his real cause of grievance is stagnancy in service because he was not considered for long period thereafter for promotion. That apart the affidavit filed on behalf of respondents goes to show that the case of promotion of the petitioner along with other eighteen matriculate constables was considered by the Departmental Selection Board in its meeting held in October 1975 and 4.11.1979, the said Board having considered the service record of each of such Constables selected five of them for further promotion. The petitioner and other thirteen Constables were found to be unfit for promotion by the said Board. In this view of the matter, the grievance of the petitioner for claiming promotion with effect from the date his junior has been selected is not well founded. Accordingly, this petition in that regard fails. Rule is discharged. No order as to costs.

